IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 10793 of 2007(I)

PETITIONER:

RAJESH,S/O.RAMACHANDRAN,JAYESH BHAVAN,
THENGAMMUM MURI,PALICKAL VILLAGE,ADOOR.

BY ADV. SRI.N.DHARMADAN (SR.)

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE
SPECIAL SECRETARY TO GOVERNMENT OF KERALA,
SECRETARIAT,THIRUVANANTHAPURAM.

2. ASST.EXCISE COMMISSIONER,OFFICE OF THE
ASST.EXCISE COMMISSIONER,PATHANAMTHITTA.

BY GOVT. PLEADER SRI. C.K. SURESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 6-8-2007, ALONG WITH COC NO. 529/07 & W.P.C. 24298/2006, THE COURT ON 22-10-2007 DELIVERED THE
FOLLOWING:

K.R. UDAYABHANU, J.

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W.P.(C).NOS.24298 OF 2006, 10793 OF 2007 &

CONTEMPT CASE (C)NO. 529 OF 2007

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DATED THIS THE 22nd October 2007

JUDGMENT

The petitioner has alleged that he was illegally arrested on 11-2-2006 and his Maruhi Zen car bring No.KL-3N 1283 seized at 6.45 a.m. from his house when it was parked in the portico alleging offences under Sections 8(1) and (2) of the Abkari Act solely on account of his failure to oblige the third respondent, Sub Inspector of Police, Adoor police station when he demanded a sum of Rs.50,000/- as bribe. According to him, it is a newly purchased car and it was never used for transporting of spirit. The Sub Inspector made a surprise visit to the house of the petitioner on the particular day and time along with Constables and seized the car when he was not in the house and used abusive language and had a scuffle with Sri. Ramachandran, father of the petitioner. Just before the seizure the petitioner

was arrested from the nearby temple where he was attending the festival. When the petitioner's father along with some of the neighbours went to the police station for release of the car, the Sub Inspector demanded a sum of Rs.50,000/- as illegal gratification and threatened that if he did not oblige, an abkari case will be registered against the petitioner. Ext.P1 is the complaint filed by the petitioner's father before the Superintendent of Police. The residents of the locality has submitted a mass petition to have an enquiry conducted through an independent agency or Superintendent of Police, Human Rights Commission, Director General of Police, Vigilance Department, Home Secretary etc. The copy of the complaint is Ext.P2. The petitioner and his father had applied to get release of the car vide Ext.P3. The Sub Inspector of Police registered Crime No.104/2006 under Section 8(1) & (2) of the Abkari Act against the petitioner alleging illicit transportation of 20 litres spirit. Copy of the F.I.R. is Ext.P2. The petitioner was released on bail as per the order of this Court vide Exts.P5 and P5(a) (I find that Ext.P5 is with respect to Crime No.104 of 2006 and

Ext.P5(a) is with respect to Crime No. 103/2006). Exts.P6 and P7 are said to be photocopies of the covers in which he had allegedly sent notice to the witnesses in the crime case claiming compensation and the same were returned with the endorsement "not known - unclaimed returned". It is pointed out that the Sub Inspector/3rd respondent submitted a report to the Judicial First Class Magistrate, Adoor stating that the petitioner is the 4th accused in other pending cases, i.e. Crime Nos.101/06, 102/06 and 103/06. Exts.P8, P8(a) and P8(b) are the above reports. According to the petitioner, he was deliberately harassed and he has not involved in the other offences. It is also alleged that the Sub Inspector of Police also arrested and assaulted the elder brother of the petitioner, who reported to the Vigilance Dy.S.P. about the demand made by the Sub Inspector for a sum of Rs.50,000/-. Ext.P9 and P10 are the complaints filed by the elder brother of the petitioner to the Dy.S.P. Adoor, Dy.S.P. Vigilance respectively with respect to the demands for bribe by the subordinates of the third respondent. According to him, all the cases are set up on account of personal animosity of the third

respondent and due to the failure of the petitioner to pay a sum of Rs.50,000/- as demanded by the third respondent. Witnesses cited are fictitious persons. He has sought for a direction to respondents 1,2 and 4, i.e. the Home Secretary, Assistant Excise commissioner, Pathanamthita and Deputy Superintendent of Police (Vigilance), Pathanamthitta to dispose of Exts.P1 to P3 and P9 & P10 complaints and representations filed by him and others and also for a independent enquiry by the Vigilance Department against the third respondent/Sub Inspector and for a direction to release Maruthi Zen car on personal bond and also to quash Ext.P4 F.I.R. in Crime No.104/2006 and Exts.P8, P8(a) and P8(b) reports, i.e. the reports implicating the petitioner in Crime Nos.101/06,102/06 and 103/06. The petitioner has also produced Exts.P11, P11(a) to P11(c), i.e. the police reports dated 7-3-06 which was corrected as 8-3-06 incorporating the petitioner as an additional accused in three other cases, i.e. 101/06, 102/06 & 103/06 which according to him have been submitted in order to get his pre-trial detention extended. As per the above reports in the above crimes the petitioner has been implicated as 4th

accused. The allegation in Crime No.101/2006 is that 1.5 litres of illicit arrack in a bottle was seized from accused 1 and 2 while they were travelling in a motor cycle bearing No. KL-03 F 3866 at 11 p.m. on 10-2-2006. The report is that the above illicit liquor was entrusted by accused 3 and 4 to the 2nd accused for sale. In Crime No.102/06 the allegation is that 10 litres of illicit arrack kept for sale in the house of the 1st accused was seized at 2.30 a.m. on 11-2-2006. The contraband is alleged to have been entrusted to the 1st accused by accused 4 and 5. In Crime No.103/06, 10 litres of illicit arrack kept for sale in the house of the 1st accused was seized at 3.30 a.m. on 11-2-2006 which was allegedly entrusted to the 1st accused by accused 4 and 5. It is alleged that in three reports, i.e. Exts.P11, P11(a) and P11(b), the date mentioned as 7-3-06 is corrected as 8-3-06. On 15-3-2006 the Sub Inspector of Police again filed another report Ext.P11(c) also with the same objective alleging theft of another Maruthi car vide crime No.1192/05. The report is dated 15-3-06 wherein the offences alleged are under Sections 379, 411, 201 read with section 34 I.P.C. wherein also the petitioner

has been incorporated as the 4th accused. According to the petitioner, the above charges have been filed to prevent the petitioner from being released on bail as per the order of this Court. The allegation in Ext.P11(c) is that the petitioner purchased Maruthi car KL-2 R 2122 with knowledge that the same is a stolen car. According to him he has not purchased any such car from accused 1 and 2. According to him, as a consequence of the above reports, he was under custody upto 30-3-2006.

2. The petitioner has also filed an application seeking to amend the writ petition in order to challenge Ext.P12 order issued by the 2nd respondent, i.e. the Assistant Excise Commissioner, Pathanamthitta issuing notice of confiscation under Section 67 C of the Abkari Act. It is pointed out that this Court as per order in I.A.No.14029/2006 issued a direction for immediate release of Maruthi Zen car bearing registration No.KL-3N 1283 and subsequently this Court as per order dated 6-11-2006 initiated suo motu contempt proceedings against respondents 2 and 3 for violation of the order of this Court dated 29-9-2006 to

release the car. It is during the pendency of the above proceedings that Ext.P12 notice dated 1-3-2007 has been issued by the 2nd respondent mentioning that the car involved in Crime No.104/06 contained more than 94% of ethyl alcohol and hence is liable to be confiscated under Section 67C of the Abkari Act. According to the petitioner, Ext.P12 notice is issued as a retaliatory measure to harass him. The petitioner has also sought for a writ or direction to quash Ext.P12 and further proceedings contemplated with respect to the car.

3. The 2nd respondent, Assistant Commissioner has filed a counter to the amendment pointing out that Ext.P12 was issued bona fide and that the petitioner has got sufficient opportunity to submit his explanation before him as reply to the show cause notice and that confiscation order will be passed only after verifying the explanations and relevant documents. It is submitted that no reply or documents were produced by the petitioner.

4. The 4th petitioner, Dy.S.P. Vigilance & Anti Corruption Bureau, Pathanamthitta has filed an affidavit stating that Sri.

Jayesh, the brother of the petitioner in the writ petition had came to the office of the Vigilance & Anti Corruption Bureau (VACB), Pathanamthitta on 23-3-2006 and preferred an oral complaint and based on the same Vigilance Case, V.C.No.1/06/PTA under Section 7, 13(2) read with Section 13(1) (d) of the P.C.Act was registered on 23-3-2006. The allegation of Sri Jayesh was that himself and his friend were taken into custody at 6 p.m. on 12-2-2006 near Adoor by Sri. Girish P.Saradhy, former S.I. of Police Adoor in connection with the detection of a stolen Maruthi car bearing registration No. KL-02 L 1638 in which Crime No.108/06 under Section 102Cr.P.C. was registered by Adoor police and that Sri. Jayesh and his friend were released in the night of 12-2-2006. It is alleged that the G.D.charge Head Constable Sri.L.Badarukutty, HCN 1193 of Adoor police station collected mobile phone of Sri. Jayesh at the time of releasing him and that Sri. Badarukutty and Sri Sabu Henry PCN 1059 of Adoor police station has collected bribe on 12-2-2006 at the time of releasing them and at the time Sri. L.Badarukutty, HCN 1193 again demanded Rs.5000/- on

21-3-2006 and later reduced the bribe amount to Rs.1000/- and he agreed to accept the bribe money on 23-3-2006 at Mariya Hospital, Adoor for returning the mobile phone to Jayesh. On registration of V.C.No.1/06/PTA, a trap was arranged by the Deputy Superintendent of Police, VACB with the assistance of two gazetted officers at Mariya hospital, Adoor on 23-3-2006. Sri. Badarukutty came to Mariya Hospital, Adoor on 23-3-2006 and talked with Sri. Jayesh and left the hospital without accepting the bribe money of Rs.1000/-. Since the trap could not materialize, the VACB party returned. Sri. Badarukutty, HCN 1193 returned the mobile phone to Jayesh as per the instruction of Girish P. Saradhy, S.I. of police. The trap case No.1/06/PTA is under investigation. After filing of the trap case on 24-4-2006 Sri Jayesh came to VACB police station, Pathanamthitta and presented a petition, i.e. Ext.P10 raising allegations against the present Sub Inspector of Adoor police station/3rd respondent alleging that on account of non-payment of bribe of Rs.50,000/-, the third respondent had booked a false Abkari Case No.104/06 of Adoor police station on 12-2-2006

against Sri Rajesh, the brother of Jayesh alleging possession of 35 litres of illicit arrack in the Maruthi Zen car being registration No. KL 3 N 1283. The F.I. statement in V.C.1/06 did not contain any allegations against the 3rd respondent. The allegations in V.C.1/06/PTA was against Sri. Badarukutty and Sri.Sabu Henry in connection with the seizure of a stolen Maruthi car No.KL 2 N 1638 and Crime No. 108/06 was registered on 12-2-2006. It is submitted that the additional allegations raised by Jayesh in Ext.P10 related to Abkari case No.102/06. It is stated that the above case is an Abkari case in which the VACB is not competent to investigate. It is submitted during the course of investigation on V.C.1/06/PTA, the third respondent was questioned and that he denied the allegations. It is also pointed out that Crime No.104/06 of Adoor police station was also charge sheeted before the court.

5. The petitioner has filed a reply affidavit alleging that the statements in the counter affidavit are false with respect to the complaint made in Ext.P2 which is the complaint by the local residents. According to him, 4th respondent does did conduct

any enquiry with respect to the above complaint. Ext.P2 has been addressed to the Director General of Police, Home Secretary, and Human Rights Commission etc. Postal receipts have also produced as Ext.P13. He has sought for an independent enquiry vide I.A.No.14029/07. It is also alleged that in Ext.P1 the allegations that the 3rd respondent and Sri. Badarukutty, HCN and Sabu Henry and Raghu PCs. are in possession of disproportionate wealth far in excess of their income. The above allegation can be enquired into by the vigilance department. He has also produced Ext.P4 of the Vigilance Manual. The allegation of demand on bribe of Rs.50,000/-by the 3rd respondent can be ascertained by holding enquiry in the mass petition of residents in the locality. Affidaivt of one of the persons is produced as Ext.P15 alleging that the Vigilance has not questioned anybody in this regard.

C.O.C.No.529/2007:

6. The petitioner has sought for invoking Section 2(b) read with Section 12 and 14 of the Contempt of Courts Act 1971 against the respondents as Ext.P12 notice has been issued by

the first respondent/Assistant Excise Commissioner seeking to invoke Section 67 C of the Abkari Act, i.e. seeking to show cause as to why the vehicle should not be confiscated. It is his contention that respondents have committed contempt as proceedings in W.P.(C) No.24298/2006 seeking to quash the proceedings initiated under Sections 8(1) and 8(2) of the Abkari Act initiated against him and also seeking to order an investigation by the VACB and also interim order of this Court to release the car and the suo motu contempt proceedings initiated by this Court was pending.

7. The first respondent/Assistant Excise Commissioner has filed a counter. It is admitted that he has issued Ext.P12 notice dated 1-3-2007 under Section 67 C of the Abkari Act. It is submitted that vide Crime No.104/2006 of Adoor police station the seizure of the vehicle was reported to him being the authorised officer by the 2nd respondent herein, i.e. the Sub Inspector of Police. It is pointed out that Section 67 B of the Abkari Act mandates the officer seizing the vehicle, i.e. used for committing the offence under the Abkari Act, without

unreasonable delay to produce the same before the officer authorised by the Government in this behalf. It is pointed out that the Sub Inspector has reported the seizure of the vehicle to him. It is pointed out that he has received chemical analysis report which would show that the material objects seized from the car is spirit. It was in the above circumstances notice under Section 67 C of the Abkari Act was issued. It is pointed out that no final order has been passed in the above matter. It is submitted that no orders of the court has been flouted and that there was no intention to do so and that he has not disobeyed the orders of this Court.

8. The petitioner has filed a reply affidavit alleging that Ext.P12 has been issued on 1-3-2007 within a short time of the interim order dated 29-9-2006 directing him to release the vehicle and that the applications filed by him before the Human Rights Commission, Vigilance Department, Home Department and proceedings initiated in W.P.(C)No. 24298/2006 and C.C.C.No.1460/2006 were pending. It is alleged that the Assistant Excise Commissioner/1st respondent is conducting

parallel proceedings which amounted to contempt of court. It is also pointed out that he had refused to release the car till 17-10-2007. According to him, the sample sent for analysis was not recovered from his car. It is pointed out that the respondent ought to have obtained permission from the court to initiate confiscation proceedings and that the steps initiated are just vindicative.

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9. The petitioner has sought for getting quashed Ext.P6/P12 notice issued by the 2nd respondent/Assistant Excise Commissioner initiating steps to confiscate car KL-3 N 1283 involved alleging that Ext.P6 has been issued only as a vindicative measure and that no incriminating articles have been recovered from his car on 2-11-2006 and that the court had ordered to release of the car and the contempt proceedings were pending and that the witnesses cited in the case are fictitious persons and that the actions of the respondent amounted to abuse of process of the court and that entire charges including in the F.I.R. are false and fabricated as he

did not heed to his demand to pay Rs.50,000/-as bribe.

10. I find that as per order dated 25-5-2007 in C.C.C.No. 1460/2006, suo motu contempt proceedings initiated by this Court. The further proceedings were closed on the respondents tendering an unconditional apology and with a severe reprimand as it appeared that the respondents deliberately delayed the compliance of the interim order of this Court to release car seized by the Sub Inspector of Police, Adoor. I find that the proceedings initiated in the above suo motu contempt case would not amount to a reflection on the merits of the case. The petitioner has produced the R.C. of the car and further detention of the car would not have served any purpose in the circumstances of the case and it was ordered to be released on executing bond for Rs.50,000/- with two solvent sureties for a like sum and on condition that he shall produce the car before the authorities whenever directed. Regarding the merits of the case, it would not be possible for this Court to enter into a finding as the same can be arrived at only after evidence is adduced.

11. The allegation of the petitioners that the car has been seized and that case has been fabricated only on account of the enmity on the part of the Sub Inspector of Police as the petitioner did not oblige to his demand for giving him an illegal gratification of Rs.50,000/-. Ext.P1 is the petition filed by the father of the petitioner before the Superintendent of Police raising the above allegations and the same is dated 21-2-2006 as per the date mentioned in Ext.P1 in W.P.(C)No.24298/2006. The date of the detection of the offence as per the F.I.R. is dated 11-2-2006. Ext.P2, the complaint by the local residents is dated 6-4-2006. Ext.P9, the compliant filed by the elder brother of the petitioner against the Head Constable and the police constable, i.e. Badarukutty and Sabu Henry is dated 3-4-2006. Ext.P10, the complaint by the elder brother of the petitioner to the Dy.S.P., VACB, Pathanamthitta contains no date. The respondents in the above complaint are the Sub Inspector of Police, Head Constable and the Police Constable. All the above complaints have been admittedly submitted before the authorities subsequent to the date of Crime No. 104/2006 registered against the petitioner. It

is also seen from the counter affidavit filed by the 4th respondent, Dy.S.P., VACB, Pathanamthitta that on the basis of the oral complaint of the elder brother of the petitioner on 23-3-2006 the Vigilance registered Case No. 1/06/PTA under various sections of the Prevention of Corruption Act and a trap was laid for the Head Constable who allegedly sought for a bribe of Rs.5000/-, but the trap did not succeed and the matter is pending enquiry and in the matter, the Sub Inspector was also questioned. It is submitted that there was no allegation of demand of bribe against the Sub Inspector then. It is also stated that the Sub Inspector has registered Crime No.104/06 under the Abkari Act and hence the Vigilance authorities are not competent to investigate the particular case. I find that the above statement of 4th respondent cannot be said to be proper. The allegation is that he demanded bribe and the investigation with respect to the same would not amount to investigating the abkari offence.

12. I find that the allegation sought to be investigated and that has been raised in the petition filed by the local residents which has been submitted before the various authorities also

relates to disproportionate assets owned by the Sub Inspector, Head Constable and two police constables, but no prima facie evidence in this regard has been submitted.

13. It has also to be noted that as per Exts.P11, P11(a), P11(b) and P11(c) produced in W.P.(C) No.24298/ 2006, the petitioner has been implicated as an additional accused in Crime Nos.101/06, 102/06 103/06 and 1192/05 in the month of March 2006, i.e. subsequent to the registration of the instant crime No.104/06 vide Exts.P11, P11(a) to P11(c) and the above are dated subsequent to Ext.P1 complaint filed by the father of the petitioner before the Superintendent of Police, Pathanamthitta against the Sub Inspector/3rd respondent alleging that he manhandled him and arrested the petitioner and allegedly demanded bribe. It has also to be noted that vide Ext.P11(c) the petitioner has been implicated in a case registered on 13-12-2005 against the certain other persons for the offences under Sections 379, 411, 201 read with Section 34 I.P.C. alleging that he purchased a stolen Maruthi 800 car. The fact that in Crime Nos.101/06, 102/06, 103/06 and Crime No.1192/05, the accused

has been implicated, soon after the allegations raised against the Sub Inspector by the father of the petitioner supports the case of the petitioner to a certain extent, at least as to the case that in the subsequent cases he has been implicated falsely and as a retaliatory measure.

14. Counsel for the petitioner has relied on the decisions in E.T. **Sunup v. C.A.N.S.S. Employees Association, AIR 2005 S.C.115**; **Govind Sahai v. State of U.P., A.I.R.1968 S.C.1513** and the K.J. Iyer's Commentary in Contempt of Court Legislature, pp 338, 339 (9th edn) 1998 to stress that when a matter is pending decision in a court of law, a parallel enquiry set up by anyone to cover the same ground would amount to contempt of court. I find that the facts situation in the decisions cited are not in pare materia with the situation herein. I find that the case set up for initiating contempt of court proceedings and for getting quashed notice issued under Section 67 C of the Abkari Act cannot be allowed at this stage. The proceedings for confiscation contemplated under the Abkari Act include also the opportunity to take up the matter in appeal and revision. All

the same, I find that the allegations raised by the petitioner calls for an enquiry . Hence, the Superintendent of Police, Pathanamthitta is hereby directed to cause an enquiry conducted in the matter by an officer not below the rank of Deputy Superintendent of Police a the earliest. It would be appropriate that the 2nd respondent/Assistant Excise Commissioner who had been implicated in the contempt of court proceedings etc. is not the person to adjudicate the confiscation proceedings. Some other officer may be authorised to hold the confiscation proceedings initiated, if it is decided to be proceeded with. Enquiry by the officer entrusted by the Superintendent of Police, Pathanamthitta shall be completed at the earliest. W.P.(C) No.24298/2006 is disposed of accordingly.

15. C.O.C.No.529/2007 and W.P.(C)No.10793/2007 are dismissed.

Government Pleader will communicate the order of this Court to the concerned authorities for compliance at the earliest.

ks. **K.R.UDAYABHANU, JUDGE**

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